

JACK M. BERRY & COMPANY, INC.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF SEC. 2(c)
OF THE CLAYTON ACT

Docket 8164. Complaint, Nov. 4, 1960, Sept. 2, 1961

Consent order requiring a brokerage concern in New York City to cease accepting illegal brokerage on purchases for its own account, such as discounts from Florida citrus fruit packers, usually at the rate of 10 cents per 1 $\frac{3}{8}$ bushel box, which transactions represented a substantial part of its business activities.

COMPLAINT

The Federal Trade Commission, having reason to believe that the corporation named in the caption hereof, and hereinafter more particularly described, has been and is now violating the provisions of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13), hereby issues its complaint, stating its charges with respect thereto as follows:

PARAGRAPH 1. Respondent Jack M. Berry & Company, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 325 Spring Street, New York, New York. Said respondent Jack M. Berry & Company, Inc. also maintains a mailing address at Winter Haven, Florida, under the same corporate name.

PAR. 2. Respondent is now, and for the past several years has been, engaged primarily in the brokerage business, representing a number of packer-principals located in various sections of the United States in the sale and distribution of citrus fruit and produce, as well as other food products, all of which are hereinafter sometimes referred to as food products. In particular, respondent has represented, and now represents, a number of citrus fruit packers located in the State of Florida in the sale and distribution of their citrus fruit, for which respondent was and is paid for its services in connection therewith a brokerage or commission, usually at the rate of 10 cents per 1 $\frac{3}{4}$ bushel box, or equivalent. A substantial part of respondent's business is acting in the capacity of a buying broker, purchasing citrus fruit for its own account for resale.

PAR. 3. In the course and conduct of its business for the past several years, in representing its packer-principals, as well as when purchasing for its own account, respondent has, directly or indirectly, caused such food products, when sold or purchased, to be shipped and transported from various packers' packing plants or places of business located in many States of the United States other than the State of New York to respondent, or to respondent's customers located in New York and in other states. Thus, for the past several years, respondent has been, and is now, engaged in a continuous course of trade in commerce, as "commerce" is defined in the aforesaid Clayton Act, as amended.

PAR. 4. In the course and conduct of its business in commerce, as aforesaid, during the past several years, but more particularly since January 1, 1959, to the present time, respondent has made, and is now making, numerous and substantial purchases of food products, as a

buying broker, for its own account for resale from various packers or sellers, on which purchases it has received and accepted, and is now receiving and accepting, directly or indirectly, something of value as a commission, brokerage, or other compensation, or an allowance or discount in lieu thereof, in connection therewith.

For example, respondent makes substantial purchases of citrus fruit for its own account from a number of packers located in the State of Florida and receives from the packers on said purchases a brokerage or commission, or a discount in lieu thereof, usually at the rate of 10 cents per $1\frac{3}{5}$ bushel box, or equivalent. Such transactions represent a substantial part of respondent's business activities.

PAR. 5. The acts and practices of respondent in receiving and accepting a brokerage or commission, or an allowance or discount in lieu thereof, on its own purchases, as herein alleged and described, are in violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13).

Mr. Cecil G. Miles and *Mr. Basil J. Mezines* supporting the complaint.

Mr. Warren E. Hall, Jr., Bartow, Fla., for respondent.

INITIAL DECISION BY WALTER K. BENNETT, HEARING EXAMINER

The Federal Trade Commission issued its complaint against Jack M. Berry & Company, Inc., on November 4, 1960, charging it with a violation of subsection (c) of Section 2 of the Clayton Act, as amended (U.S.C. Title 15, Section 13). The complaint alleged that as a buying broker for its own account respondent received a brokerage or commissions or a discount in lieu thereof from packers of citrus fruit usually at the rate of ten cents per $1\frac{3}{5}$ bushel box or equivalent. The acts or practices of respondent in accepting such payments on its own purchases were allegedly in violation of subsection (c) of Section 2 of the Clayton Act.

On June 14, 1961, counsel supporting the complaint presented to the undersigned an agreement dated June 12, 1961, executed by respondent, its attorney and counsel supporting the complaint. Said agreement provided for the entry without further notice of a cease and desist order and was duly approved by the Director of the Bureau of Litigation.

The hearing examiner finds that said agreement includes all of the provisions required by Section 3.25 (b) of the Rules of the Commission, that is:

A. An admission by respondent of all jurisdictional facts alleged in the complaint.

B. Provisions that—

(1) The complaint may be used in construing the terms of the order;

(2) The order shall have the same force and effect as if entered after a full hearing;

(3) The agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the Commission;

(4) The entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement;

(5) The order may be altered, modified, or set aside in the manner provided by statute for other orders;

C. Waivers of—

(1) The requirement that the decision must contain a statement of findings of fact and conclusions of law;

(2) Further procedural steps before the hearing examiner and the Commission;

(3) Any right to challenge or contest the validity of the order entered in accordance with the agreement.

In addition the agreement contains the following provision: A statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that it has violated the law as alleged in the complaint.

Having considered said agreement including the proposed order and being of the opinion that it provides an appropriate basis for settlement and disposition of this proceeding, and finally disposes of the proceeding in all respects, the hearing examiner hereby accepts the agreement but orders that it shall not become a part of the official record unless and until it becomes a part of the decision of the Commission.

The following jurisdictional findings are made and the following order issued:

1. Respondent Jack M. Berry & Company, Inc., is a corporation existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 325 Spring Street, in the City of New York, State of New York, with a mailing address also maintained at Winter Haven, Florida, under the same corporate name.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent.

Complaint

59 F.T.C.

ORDER

It is ordered, That respondent Jack M. Berry & Company, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the purchase of citrus fruit or produce in commerce, as "commerce" is defined in the aforesaid Clayton Act, do forthwith cease and desist from:

Receiving or accepting, directly or indirectly, from any seller, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, upon or in connection with any purchase of citrus fruit or produce for respondent's own account, or where respondent is the agent, representative, or other intermediary acting for or in behalf, or is subject to the direct or indirect control, of any buyer.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, published May 6, 1955, as amended, the initial decision of the hearing examiner shall, on the 2d day of September 1961, become the decision of the Commission; and, accordingly:

It is ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with the order to cease and desist.

IN THE MATTER OF

KAYTON FUR CORPORATION ET AL.